1942.

File No. B Tenancy/42.

K

Legal DEPARTMENT

B. BRANCH

Subject:—

Governor's Bill No of 1942.

A Bill is amend

The Bombay Tenancy Act, 1939.

and the Bombay Small Holders Relief Act, 1938.

(Amendment of S. 9)

of Small H.R. Act.

Amendment of ss. 5, 23 & 25

and insertion of new S. 16A.

in Tenancy Act).

Bom. ~~XXVI~~ and XXVII of 1942.

File No. B Tenancy/42

Std. Scott Slip 24-B

566-Pr.

CONTENTS:

Legal Department File No. B. Tenancy/43.

Ser.No.	Compilation No.	Subject.	Pages.
		A Bill to amend B. Tenancy Act, 1939 and A Bill to amend B. Small Holders' Relief Act, 1938.	
1	U.R.to RD.No.5935 dt.31-7-43	Amendment of the B.Tenancy Act,1939 and B.Small Holders Relief Act, 1938.	1-3
2	U.R.to RD.No.6508 dt.11.8.43	Draft Bills.	3-10
3	R.T.No.41 dt.4.1.43	Assent of the Governor to the Bills.	11
4	G.N.L.D.No.100 dt.5.1.43	Publication of Dom' Act No.XXVI of 1943.	13-17
5	G.N.L.D.No.111 dt.5.1.43	Publication of Dom.Act No.XXVII of 1943.	19-23
6	----------	Governor's Bill No. XIX of 1943.	25-35
7	----------	Governor's Bill No. XXV of 1943	37-47
8	----------	Dom.Acts Nos.XXVI & XXVII of 1943.	49-50

B.E.S. 1/5.

NR
21/5

K.S.R.
2/5

K

Office of the R.L.A.

The Secretary, R.D., in his note dated 4th July 1942 at page 22 ante states that the amendments proposed - which are set out in the R.D. office note at pp. 15-16 ante - are of a minor nature meant specifically to safeguard the interests of the Military personnel. It may be pointed out, however, that actually the proposed amendments go much further and confer some special privileges on minors also. It is true that the existing provision in sub-section (3) of section 5 does confer a special privilege on a minor protected tenant. But the amendments proposed in paras. 3 to 5 of the R.D. office note confer certain special privileges on all tenants who are minors. The further amendments that all minors (lessors) should on attaining majority be able to terminate forthwith unexpired leases of any duration (including leases which may be permanent or for long periods like 99 or 999 years) and that persons in the Crown forces, when discharged, should also be able to do so are measures of wide import. To this extent, the amendments, as pointed out in the last opinion of the R.L.A., at page 19 ante, would be of a far reaching character. It was, therefore, necessary, for R.D. to follow the usual procedure in this case and obtain the orders of Government as laid down in instruction 25 of the Instructions and P.A.S. Deptt. Circular No.906/34 dated 3rd September 1938 before sending the papers to the R.L.A. for drafting the amendments and indicating the sanctions etc. The amendments, however, have been put into legal shape and two drafts Bills to amend the Bombay Tenancy Act, 1939, and the Bombay Small Holders Relief Act, 1938, have been sent herewith.

3. The amendment proposed in para. 4 of the R.D. office note at p. 15 ante has been incorporated in clause D.H.S. 1/5.

3 of the first draft Bill in the form of a new section 16A. As pointed out in H.L.A.'s opinion No. 4541 dated 2nd June 1942, the provisions contained in Chapter III of the Bombay Tenancy Act apply to all tenants including protected tenants. Since the provisions of the new section 16A in Chapter III would apply to protected tenants as well, sub-section (3) of section 5 of the Act is no longer necessary. Accordingly by Clause 2 of the draft Bill, this sub-section has been deleted from the Act.

3. Clause 4 of the draft Bill contains the amendment proposed in para. 5 of the R.D. office note. The expression 'cultivating season' is not defined in the Act and it is, therefore, necessary to define it. An Explanation, for this purpose, is added to the proviso in this clause. The R.D. should fill in the blank and specify the necessary dates in the Explanation.

4. Under executive instructions the Bills would require the previous approval of the Governor-General before enactment. The subject matter of the Bills falls under entry 21 in List II in the Seventh Schedule to the Government of India Act, 1935. The Bills do not require any previous sanction under the Government of India Act, 1935.

Sd/- P.N.U. 21/7
Remembrancer of Legal Affairs.

U.H. to R.D. No. 5035 dated the 21st July 1942.

B.K.S. 1/5.

Office of the R.L.A.

It is not necessary to carry out all the verbal amendments proposed by Secretary, R.D. in the Bombay Tenancy Amendment Bill. A revised draft of the Bill is sent herewith. The Statement appended to the draft Bill (p. 33) as slightly revised is in order. The draft Bill to amend the Bombay Small Holders Relief Act at p. 37 ante and the Statement to it at p. 35 ante are in order.

3. As regards the marginal remarks of Secretary, R.D. on page 20 ante, in view of the definition of the expression 'land' in section 3 (4) of the Bombay Tenancy Act, 1939, section 23 of the Act ---- --- ------- ----ed to be added to it by clause 3 of the ~~A~~ draft Bill will apply only to agricultural leases. The view taken to this effect by Secretary, R.D. is correct. The question whether an agricultural lease cannot be permanent or for a longer term than ten years is one of fact for the Revenue Department to decide.

Sd/- P.N.U. 11/8
Remembrancer of Legal Affairs.

U.R. to R.D., No. 6508 dated the 11th August 1943.

B.K.S. 1/8.

Rule No.41

13 - 4-1-43

No. 201(71,

Office of the Governor's Secretary,
Government House,
Bombay, 2nd January 1943.

From

J. D. Irwin, Esquire, CIE.OBE.MC.ICS.
Secretary to the Governor of Bombay.

To

The Secretary to Government,
Local Department, Bombay.

Subject :- Bills to amend the Bombay Tenancy Act 1939, and the Bombay Small Holders Relief Act, 1938.

Sir,

With reference to your letters Nos. 10246 and 10247, dated the 24th December 1942, I am directed to return herewith the copies of the Bills to amend (1) the Bombay Tenancy Act, 1939, and (2) the Bombay Small Holders Relief Act, 1938, prepared by His Excellency the Governor under paragraph (3) of the Proclamation, dated the 4th November 1939, issued by him under section 93 of the Government of India Act, 1935, and to state that under the provisions of the aforesaid paragraph, His Excellency the Governor is pleased to declare that the assents to the Bills in the name of His Majesty.

Your obedient servant,

Sd/- J. D. Irwin

Secretary to the Governor of Bombay.

B.K.S. 1/8.

Acts.

Publication of the Bombay Small Holders Relief (Second Amendment) Act, 1943.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 100.
Bombay Castle, 6th January 1943.

Letter to the Secretary to the Governor, No. 10247, dated the 24th December 1942.

Letter from the Secretary to the Governor, No. 201(71) dated the 2nd January 1943.

"With reference to your Letter Nos. 10246 and 10247, dated the 24th December 1942, I am directed to return herewith the copies of the Bills to amend (1) the Bombay Tenancy Act, 1939, and (2) the Bombay Small Holders Relief Act, 1939, prepared by His Excellency the Governor under paragraph (2) of the Proclamation dated the 4th November 1939, issued by him under section 93 of the Government of India Act, 1935, and to state that under the provisions of the aforesaid paragraph, His Excellency the Governor is pleased to declare that the assents to the Bills in the name of His Majesty."

RESOLUTION. The Law should be published as Bombay Act No. XXVI of 1943, in the Bombay Government Gazette dated the 6th January 1943.

2. The Act should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Revenue Department.

By order of the Governor of Bombay.

Sd/- S.L.Chandurkar

P.N. Moos,
For Secretary to Government,

To

The Manager, Government Central Press, Bombay, with a copy of the Act and with a request that 15 gazette copies of the Act may be forwarded to the Legal Department).
The Revenue Department, } With
The Oriental Translator to Government. } a copy
The Secretary to the Bombay Legislative Council } of
The Secretary to the Bombay Legislative Assembly. } the Act.

* With five extra copies

D.K.S. 1/3.

The following Act made by the Governor of Bombay in exercise of the powers vested in him by virtue of the Proclamation dated the 4th November 1939 issued by him under section 93 of the Government of India Act, 1935, having been assented to by him on the 31st December 1943 is hereby published for general information.

P. N. MOOS,
Secretary to the Government of Bombay,
Legal Department.

Bombay Act No. XXVI of 1944.

(First published, after having received the assent of the Governor in the "Bombay Government Gazette" on the January*1943).

*Proof: Please insert here the date of the publication of the Act in the "Bombay Government Gazette".

B.K.S. 1/5.

Agtst

Publication of the Bombay Tenancy (Amendment) Act, 1943.

GOVERNMENT OF BOMBAY
Legal Department,
Resolution No. 111.
Bombay Castle, 6th January 1943.

Letter to the Secretary to the Governor. No. 10246. dated the 24th December 1942.

Letter from the Secretary to the Governor, No. 261(71), dated the 2nd January 1943.

"With reference to your letters Nos. 10246 and 10247, dated the 24th December 1942, I am directed to return herewith the copies of the Bills to amend (1) the Bombay Tenancy Act, 1939, and (2) the Bombay Small Holders Relief Act, 1939, prepared by His Excellency the Governor under paragraph (3) of the Proclamation dated the 4th November 1939, issued by him under section 93 of the Government of India Act, 1935, and to state that under the provisions of the aforesaid paragraph, His Excellency the Governor is pleased to declare that he assents to the Bills in the name of His Majesty."

RESOLUTION.- The Law should be published as Bombay Act, No. XXVII of 1943 in the Bombay Government Gazette dated the 6th January 1943.

2. The Act should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devanagari scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Revenue Department.

By order of the Governor of Bombay,

Sd/-S.L.Chaudhari

P.N. 11006.
For Secretary to Government.

To
The Manager, Government Central Press, Bombay, (with a copy of the Act and with a request that 15 gazette copies of the Act may be forwarded to the Legal Department).
The Revenue Department.) With a
*The Oriental Translator to Government.) copy
The Secretary to the Bombay Legislative Council.) of the
The Secretary to the Bombay Legislative Assembly) Act;

*With five extra copies.

B.M.S. 1/6.

The following Act made by the Governor of Bombay in exercise of the powers vested in him by virtue of the Proclamation dated the 4th November 1939 issued by him under section 93 of the Government of India Act, 1935, having been assented to by him on the 31st December 1942 is hereby published for general information.

P. N. MOOS,
Secretary to the Government of Bombay,
Legal Department.

Bombay Act No. XXVII of 1943.

(First published after having received the assent of the Governor in the "Bombay Government Gazette" on the January 1943).

"Press!- Please insert here the date of the publication of the Act in the "Bombay Government Gazette".

B.K.S. 1/5.

29 of 1942

GOVERNOR'S ~~BILL No. XXX~~ OF 1942. Act No XXVI

A Bill to amend the Bombay Small Holders Relief Act, 1938.

WHEREAS it is expedient to amend the Bombay Small Holders Relief Act, 1938, for the purpose hereinafter appearing ;

Bom. VIII of 1938.

AND WHEREAS the Governor of Bombay has assumed to himself under the Proclamation, dated the 4th November 1939, issued by him under section 93 of the Government of India Act, 1935, all powers vested by or under the said Act in the Provincial Legislature ;

26 Geo. 5, Ch. 2.

NOW, THEREFORE, in exercise of the said powers, the Governor of Bombay is pleased to make the following Act :—

1. This Act may be called the Bombay Small Holders Relief (Second Amendment) Act, 1942. Short title.

2. To section 9 of the Bombay Small Holders Relief Act, 1938, the following new sub-section shall be added, namely :— Amendment of section 9 of Bom. VIII of 1938.

Bom. VIII of 1938.

" (3) Notwithstanding any law for the time being in force or any agreement or usage, the tenancy of any land used for agricultural purposes which is leased to and held by a person in the military, naval or air service of the Crown shall not be liable to be terminated only on the ground that such land has been sub-let by or on behalf of the said person."

MO-II Bk H 1127

31 89 94-97

STATEMENT.

The relief under section 9 of the Bombay Small Holders Relief Act, 1938, is available to tenants on the conditions mentioned in that section. But as the relations between landlords and tenants are governed by the conditions in their leases, most of which contain a clause against sub-letting, persons in the Defence Services of the Crown who cannot cultivate lands themselves will be deprived of their tenancy rights unless they are specifically protected from eviction on that account. It is, therefore, proposed to insert a new sub-section (*3*) in section 9 of the Small Holders Relief Act to achieve this object.

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRESS.

41 99 10+24

GOVERNOR'S BILL No. XXXI OF 1942. Act No. XXVII

A Bill to amend the Bombay Tenancy Act, 1939.

WHEREAS it is expedient to amend the Bombay Tenancy Act, 1939, for the purposes hereinafter appearing ;

Bom. XXIX of 1939.

AND WHEREAS the Governor of Bombay has assumed to himself under the Proclamation, dated the 4th November 1939, issued by him under section 93 of the Government of India Act, 1935, all powers vested by or under the said Act in the Provincial Legislature ;

26 Geo. 5, Ch. 2.

NOW, THEREFORE, in exercise of the said powers, the Governor of Bombay is pleased to make the following Act :—

Short title.

1. This Act may be called the Bombay Tenancy (Amendment) Act, 1942.

Insertion of new section 16A in Bom. XXIX of 1939.

2. After section 16 of the Bombay Tenancy Act, 1939 hereinafter called the said Act, the following new section shall be inserted, namely :—

Bom. XXIX of 1939.

Sub-letting of land by or on behalf of person in military, naval or air service of the Crown not to terminate tenancy.

"16A. Notwithstanding anything contained in this Act or any other law for the time being in force or any agreement or usage, the tenancy of any land leased to and held by a person in the military, naval or air service of the Crown shall not be liable to be terminated on the ground only that the land has been sub-let by or on behalf of the said person."

Amendment of section 23 of Bom. XXIX of 1939.

3. To section 23 of the said Act, the following proviso shall be added, namely :—

"Provided that if any such lease is made by or on behalf of a person in the naval, military or air service of the Crown, then notwithstanding any period for which the lease is made, it may be terminated before the expiry of the said period by such person after he ceases to be in the said service ; but such termination shall not take effect

before the date of expiry of the cultivating season during which such person ceases to be in the said service.

Explanation.—For the purposes of this section cultivating season shall mean the period from the 1st day of April of one year to the 31st day of March of the next following year."

Amendment of section 26 of Bom. XXIX of 1939.

4. In section 26 of the said Act, for the words "Nothing contained in this Act", the words and figures "No provision contained in this Act except the proviso to section 23" shall be substituted.

STATEMENT.

Section 23 and section 5, sub-section (*2*) (*d*) of the Bombay Tenancy Act, 1939, intended to safeguard the interests of protected tenants and landlords operate harshly against persons joining the military, naval and air services of the Crown during the War. Those of them who are landlords have to lease their lands and those who are protected tenants have to sub-let their tenancy rights while they are on service. Section 23 of the Bombay Tenancy Act will, however, prevent them from undertaking cultivation of their lands on their return to civilian life as the period of lease under that section has to be for a period not less than ten years while section 5, sub-section (*2*) (*d*) will render the protected tenants, who sub-let the lands, liable to loss of their tenancy rights. As it is necessary to safeguard the interests of persons in the Defence Services of the Crown, whether they be landlords or protected tenants, it is proposed to amend the Act suitably for this purpose.

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.